

# **EXHIBIT F – Part 2**

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1 S. Donoghue

2 A. I don't recall.

3 Q. If you haven't said it already,  
4 what was the final determination when that  
5 consideration took place, to either  
6 termination or some sort of corrective action  
7 for Mr. Gillette?

8 A. Could you repeat the question,  
9 please?

10 Q. What was the final determination  
11 regarding whether or not to terminate Mr.  
12 Gillette for his behavior or to allow him some  
13 sort of corrective action?

14 A. I believe he got -- he received  
15 some type of corrective memo. I should -- can  
16 I -- I just want to make one clarification?

17 When I explained the corrective  
18 action to you, that process goes for certain  
19 levels of employees and once you reach what we  
20 call an M 8 level, you don't go through that  
21 formal process. You could just receive a memo  
22 about your performance or your conduct and  
23 there are no steps that you're entitled to and  
24 you're not entitled to the grievance procedure  
25 either at that level and above.

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1 S. Donoghue

2 So I think Mr. Gillette may have  
3 fit the category that he would not go through  
4 a series of corrective action or even if it  
5 was, it could have been determined that his  
6 behavior was such that we wouldn't take him  
7 step by step. This is something we considered  
8 to be serious, not to be tolerated and not to  
9 happen again. So he would receive a harsher  
10 penalty, which would have been some type of  
11 memo.

12 Q. When you say it is a harsher  
13 penalty, what is the effect of receiving one  
14 of these memos; how would that impact someone  
15 in Mr. Gillette's position at the hospital?

16 A. Well, he is on notice, his job is  
17 in jeopardy.

18 Q. Okay.

19 A. Possibly he didn't receive his  
20 annual increase. It would be reflected on his  
21 performance review.

22 Q. And does a memo like this have an  
23 effect for a period of time, does it stay on  
24 the record for a year and then get taken off  
25 or how does that work?

1 S. Donoghue

2 A. It never leaves the record. It  
3 is part of the historical record, but say  
4 after a year or so you've demonstrated, you  
5 know, a 360 change in whatever the issue was,  
6 you know, it wouldn't be considered unless  
7 that behavior surfaced again.

8 Q. Okay.

9 In your March 2007 investigation  
10 of Mr. Gillette's conduct, prior conduct as a  
11 supervisor, specifically related to allowing  
12 certain type of language/conversation to take  
13 place in the workplace, was that investigated  
14 or reviewed related to the March 2007  
15 investigation?

16 A. I don't believe that it was  
17 reviewed in that context. However, I do  
18 remember speaking to him about specifically  
19 about the incident where the person was trying  
20 to learn how to cultivate this other accent,  
21 that that also was not appropriate in a  
22 workplace setting. If you want to do that, do  
23 that on your own time, your own place, but  
24 just how you have to be aware of those things.  
25 It wasn't to the same degree -- I didn't see

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1 S. Donoghue

2 it in the same way as previous complaints  
3 about Mr. Gillette had been made.

4 Q. Is it fair to say that the reason  
5 why the prior memo given to Mr. Gillette was  
6 not reviewed or considered as part of the  
7 March 2007 investigation was because the  
8 nature of the complaint in March of 2007 was a  
9 different type than the nature of complaints  
10 that gave rise to the previous discipline that  
11 Mr. Gillette may have received?

12 A. It had nothing to do with type.  
13 I think it was as a result of my talking to  
14 everybody. They viewed that the particular  
15 situation as being playful, it was at lunch  
16 break and there was no harm intended, there  
17 were -- so it was a totally different nature.

18 They saw it as being playful,  
19 whereas I thought it was not. Then again,  
20 talking to Mr. Gillette about enlarging his  
21 awareness of issues that could possibly be  
22 offensive to people. Even though it may be  
23 playful to some people, to other people it is  
24 not necessarily playful.

25 Q. Okay. Did you have any

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1 S. Donoghue  
2 discussions with Mr. Meggs regarding possible  
3 relationship between Mr. Gillette's previous  
4 disciplines and this current complaint by Mr.  
5 Bryan?

6 A. I don't recall the specific  
7 discussion I had with Mr. Meggs.

8 Q. I'm sorry, you are saying you  
9 don't recall the or a?

10 A. I don't recall the specific -- I  
11 don't recall the specifics of the discussion I  
12 had with him offhand.

13 MS. KALE: Can we take a break?

14 MR. SCOTT: Absolutely.

15 (Recess taken.)

16 MR. SCOTT: Read back the last  
17 question and answer please.

18 (Record read.)

19 MR. SCOTT: I'm going to ask that  
20 these pages -- it is three pages, Bates  
21 MKSCC 00105, 00100 and 00107 -- be  
22 marked for identification. We'll mark  
23 as Plaintiff's -- we will use numbers  
24 because they used letters -- A.

25 Off the record.

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1 S. Donoghue  
2 (Discussion off the record.)  
3 MR. SCOTT: We will mark MKSCC  
4 105, 106 and 107. Back on the record  
5 Bates numbers are 105, 106, 107,  
6 Plaintiff's A.

7 (Document entitled "Investigation  
8 Summary, Investigation Completed  
9 3/14/07" bearing production Nos.  
10 MKSC 00105 through MKSCC 00107  
11 marked Plaintiff's Exhibit A for  
12 identification, as of this date.)

13 Q. Ms. Donoghue, I want you to take  
14 a look at the three pages that are placed in  
15 front of you. Take your time. When you are  
16 ready, just look up and let me know.

17 A. All right.

18 Q. Ms. Donoghue, do you recognize  
19 that document?

20 A. Yes, I do.

21 Q. What is that?

22 A. It is a summary of an  
23 investigation that I conducted as a result of  
24 Mr. Bryan meeting with me about some  
25 complaints.

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1 S. Donoghue  
2 Q. Specifically that the  
3 investigation that you conducted in March of  
4 2007?

5 A. Yes, correct.

6 Q. And the allegations that gave  
7 rise to this investigation were Mr. Bryan  
8 complained of the use of racial slur and  
9 homophobic remark by his co-worker, a vendor,  
10 and a supervisor?

11 A. Correct.

12 Q. And do you recall what the racial  
13 slur was that he was complaining of?

14 A. The use of the word "nigger."

15 Q. And the homophobic remark?

16 A. People who live at home, let me  
17 see, they are viewed as feminine.

18 Q. The co-workers that he complained  
19 about, who are they; what are their names?

20 A. As indicated in this report, the  
21 second bullet, it would have been -- let's see  
22 Kevin O'Connor is not a co-worker. It would  
23 be Kevin Walrond, Jamal Robinson, Miguel Ruiz  
24 and Rupert Gillette, the supervisor.

25 Q. Before we move on, Mr. O'Connor,

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1 S. Donoghue  
2 what is his relationship to the hospital?  
3 A. He is a vendor. My understanding  
4 is he works with the company from whom we've  
5 made some instrument purchases and his job  
6 is -- he comes every night to do a specific  
7 check on the instruments, to make sure they  
8 are operational.

9 Q. Okay. When you say  
10 "instruments," are these like machines that  
11 are --

12 A. They are very sophisticated  
13 technological instruments that are used in  
14 operating procedures.

15 Q. And not to diminish what his  
16 skills or his title are, so essentially he  
17 performs maintenance on hospital equipment?

18 A. I would say that is probably a  
19 good description.

20 Q. You used the term "vendor" to  
21 describe him?

22 A. Correct, he is not an employee of  
23 the hospital.

24 Q. Would a vendor also be considered  
25 a subcontractor?

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1 S. Donoghue  
 2 A. I'm not sure of the official  
 3 category.  
 4 Q. Under the code of conduct as laid  
 5 out by the Memorial handbook, Memorial  
 6 employee handbook, who is governed by that  
 7 code of conduct?  
 8 A. Anyone who has any business to do  
 9 at the hospital, who works at the hospital.  
 10 Q. Would a vendor under that  
 11 definition be governed under the code of  
 12 conduct?  
 13 A. Yes. Correct.  
 14 Q. You interviewed Mr. O'Connor  
 15 related to this March 2007 investigation?  
 16 A. Yes, I did.  
 17 Q. And you took notes related to  
 18 that investigation?  
 19 A. Yes, I did.  
 20 Q. And you transcribed those  
 21 handwritten notes into the typewritten final  
 22 investigative report that you have before you,  
 23 correct?  
 24 A. Yes, I did.  
 25 Q. And the same goes for your

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1 S. Donoghue  
 2 interaction with Mr. Walrond; is that correct?  
 3 A. Yes.  
 4 Q. The handwritten notes that you  
 5 then transcribed into a typewritten report,  
 6 correct?  
 7 A. Correct.  
 8 Q. And the same for Mr. Ruiz?  
 9 A. Correct.  
 10 Q. And Mr. Gillette?  
 11 A. Correct.  
 12 Q. Mr. Jamal Robinson, he was not  
 13 interviewed?  
 14 A. I believe he was, it states here  
 15 that he was on medical leave at the time.  
 16 Q. Okay. Yes, very good. Thank  
 17 you.  
 18 Now these interviews, did they  
 19 occur individually or as a group?  
 20 A. Individually.  
 21 Q. And who was present during each  
 22 of the interviews?  
 23 A. My recollection is except for Mr.  
 24 O'Connor, Mr. Meggs was with me.  
 25 Q. Did Mr. Meggs take any notes

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1 S. Donoghue  
 2 related to this investigation?  
 3 A. I have no recollection of that.  
 4 MR. SCOTT: I am going to mark  
 5 for identification -- this would be B,  
 6 Plaintiff's B.  
 7 (One-page corrective action memo  
 8 from John Meggs to Rupert  
 9 Gillette dated August 3, 2006  
 10 marked Plaintiff's Exhibit B for  
 11 identification, as of this date.)  
 12 Q. Ms. Donoghue, I would like you to  
 13 take your time, read that document and when  
 14 you are done, just let me know.  
 15 A. All right.  
 16 Q. Are you done, ma'am?  
 17 A. Yes.  
 18 Q. Ms. Donoghue, do you recognize  
 19 that document?  
 20 A. Yes, I do.  
 21 Q. What do you recognize it to be?  
 22 A. It is what I say, a serious  
 23 corrective action memo given to Mr. Gillette.  
 24 Q. If you can say, what is the date  
 25 on that memo?

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1 S. Donoghue  
 2 A. August 3rd, 2006.  
 3 Q. Who, if you can determine, is  
 4 responsible for giving that memo to Mr.  
 5 Gillette?  
 6 A. It appears that it was John Meggs  
 7 who administered this.  
 8 Q. Thank you.  
 9 Are you also cc'd, copied on that  
 10 memo?  
 11 A. Yes, I am.  
 12 Q. Who else is copied on that memo?  
 13 A. Aileen Killen and Liz McCormick.  
 14 Q. If you can state for the record,  
 15 who is Aileen Killen and Liz McCormick?  
 16 A. Aileen Killen at the time was  
 17 director of the perioperative department. Liz  
 18 McCormick is responsible for the department of  
 19 nursing under which CPD reports up through.  
 20 Q. Would it be safe to say both of  
 21 those individuals are within the hospital  
 22 hierarchy above Mr. Meggs in title?  
 23 A. Correct.  
 24 Q. Is one of those individuals above  
 25 the other or are they contemporaneous?



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1 S. Donoghue

2 Q. After reading it, could you state  
3 what was the incident that gave rise to this  
4 memo being administered by Mr. Meggs to Mr.  
5 Gillette?

6 A. Mr. Bryan had complained that he  
7 had received his benefits package from the  
8 benefits department and he had left it on a  
9 desk or a table, and at some point during the  
10 evening the package was gone and I believe he  
11 saw it in a garbage pail.

12 Q. Ultimately, Mr. Bryan found out  
13 that Mr. Gillette had actually thrown out his  
14 benefits package in the garbage?

15 A. Correct.

16 Q. And I would like to direct your  
17 attention to that last paragraph --

18 A. Yes.

19 Q. -- of the document?

20 A. Yes, correct.

21 Q. Specifically the last sentence:

22 "He was made aware that our  
23 conversations concerning these  
24 counter-productive relations are being  
25 monitored by our Employee Relations

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1 S. Donoghue

2 another discussion, I might say oh, by the  
3 way, how are things going.

4 Q. Did you ever stop into the actual  
5 unit on occasion when Mr. Gillette was on duty  
6 to see how things were going yourself?

7 A. Not very often due to the time  
8 that he was working. At other times during  
9 the day, but not specifically at night. Not  
10 as often at night as I did during the day.

11 Q. Just for the record, Mr.  
12 Gillette's tour of duty was what time?

13 A. The night shift. The last shift,  
14 if you will.

15 Q. 11 P.M. to 7:00?

16 A. 11:30 to 7:30 or 11:00 to 7:00,  
17 I'm not sure.

18 Q. I'm just going to refer your  
19 attention back to Exhibit B, the corrective  
20 memo dated August 3rd, 2006.

21 A. Correct.

22 Q. Specifically, the use of that  
23 last bold-typed phrase in the first paragraph,  
24 the use of vulgar language in the workplace --

25 A. Yes.

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1 S. Donoghue

2 Specialist, Sheila Donoghue."

3 A. I see that.

4 Q. Just going back to our earlier  
5 conversation about monitoring, where  
6 monitoring came from --

7 A. Yes.

8 Q. -- if you can just explain to me  
9 what sort of actual activities were taking  
10 place on your part related to this particular  
11 incident and other counter-productive  
12 relationships vis-a-vis Mr. Gillette?

13 A. What I can tell you, I was  
14 doing -- the word "monitor" is the word that  
15 Mr. Meggs chose.

16 Q. Yes.

17 A. What I was doing was doing  
18 periodic follow-ups to see how things were  
19 going in the department.

20 Q. And when you would do a  
21 follow-up, how specifically or logistically  
22 would that take place?

23 A. It could be a phone conversation,  
24 where I would pick up a phone and ask John how  
25 things were going. It could be as part of

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1 S. Donoghue

2 Q. -- do you consider the use of the  
3 word "nigger" to be vulgar language in the  
4 terms of this particular memo?

5 A. Do you mean for me personally or  
6 as a professional employee? I don't know  
7 how --

8 Q. Well, you know what, we're going  
9 to say both. And you can determine which one  
10 you'll say first.

11 A. I would say personally and  
12 professionally, I consider it to be offensive,  
13 very offensive.

14 Q. Would you consider it to be  
15 vulgar, personally?

16 A. I would choose to describe it  
17 as -- for me, it would be deeply offensive.

18 Q. As far as professionally now  
19 within the context of the employee handbook,  
20 and the policy and procedure manual --

21 A. Yes.

22 Q. -- is the use of the word  
23 "nigger" in the work environment vulgar  
24 language?

25 A. For me, again, I would say it is

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1 S. Donoghue  
2 more serious than that, it is deeply  
3 offensive. But I would like to say something  
4 else.

5 Q. All right.

6 A. When I looked in that particular  
7 issue about the use of the word "nigger," I  
8 was primarily talking to a relatively young  
9 group of black males and they were trying to  
10 say to me that the word nigger to them was  
11 like jerk, stupid, it was a slang expression.

12 And my discussion with them is  
13 that may have been how they were using the  
14 word, however, there were many people in the  
15 workplace who come from a whole different  
16 historic perspective and even if not from that  
17 perspective, they consider the word, no matter  
18 how you spell it, to be offensive. It is not  
19 to be used in the workplace. In other words,  
20 they didn't mean it to be offensive. This is  
21 how they refer to each other.

22 Q. In your position in the human  
23 resources department, did you or do you -- and  
24 I won't use the "or," strike the "or."

25 Do you interpret the use of the

1 S. Donoghue  
2 details, but I recall there is a section  
3 referencing to them.

4 Q. Do you recall what is the process  
5 of posting of jobs?

6 A. There are two processes,  
7 actually.

8 Q. Thank you.

9 A. I'll begin with the department.  
10 If a department has an opening and they may be  
11 due to the particular skills of a job or they  
12 sense that maybe they want to encourage  
13 promotional opportunities from within, what  
14 they are advised to do is to let everybody  
15 know that there is a particular -- in their  
16 department, that there is a particular job  
17 that is about to be opened or created.

18 Q. Okay.

19 A. And then they could use a memo,  
20 put it someplace, or verbally let people know  
21 about this, so that people in that department  
22 only would have that ability to post for the  
23 job.

24 Q. To apply?

25 A. Yes. Sometimes departments do

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1 S. Donoghue  
2 word "nigger" in the workplace to be a  
3 violation of the rules of the employee  
4 handbook and/or the policy manual?

5 A. If someone is complaining it is  
6 offensive, I would say yes. My general rule  
7 of thumb would be just not to use the word at  
8 all because we don't know what is offensive to  
9 some people and not to others, but just  
10 discontinue using the word. It has the  
11 potential to be offensive.

12 Q. So you would say personally and  
13 based on your understanding of the handbook --

14 A. It is something.

15 Q. -- it is out of bounds?

16 A. I think it is.

17 Q. The last subject --

18 A. Okay.

19 Q. -- posting of jobs.

20 A. Okay.

21 Q. The employee handbook for  
22 Memorial addresses the manner in which job  
23 vacancies are posted by the hospital; is that  
24 correct?

25 A. I don't recall specifically

1 S. Donoghue  
2 that thinking they'll get an internal  
3 candidate and then they don't. So then they  
4 will do what we refer to as the external  
5 posting, it will be put online so now it is  
6 open to the universe, to anyone with the  
7 qualifications to apply.

8 Q. Okay.

9 A. But sometimes what happens is a  
10 manager may know of somebody through  
11 connections and then they will work with  
12 employment, if they've identified somebody  
13 that they may have in mind. If they work with  
14 employment, to do the recruiting for this  
15 particular individual. That doesn't happen  
16 very often.

17 Q. Have you ever had occasion to  
18 receive a complaint from Edmund Bryan about  
19 failure to promote him or improper posting of  
20 a new job in his unit, did that ever come up?

21 A. I don't know if Edmund  
22 specifically spoke to me about that, I don't  
23 recall.

24 Q. Do you know whether or not he  
25 ever made a complaint to your department,

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1 S. Donoghue  
 2 maybe not to you specifically, but to your  
 3 department about the failure to promote or  
 4 improper posting of a job notice?  
 5 A. I am not aware of that.  
 6 Q. During your last tenure as an  
 7 employee relations specialist --  
 8 A. Yes.  
 9 Q. -- did you ever have occasion to  
 10 sit in on interviews for the promotion of  
 11 someone who is already an employee at the  
 12 hospital?  
 13 A. I was not involved in that at  
 14 that time.  
 15 Q. Would you be consulted at any  
 16 point in time during the interview process  
 17 when an employee is being considered for a  
 18 promotion?  
 19 A. Possibly.  
 20 Q. And under what circumstances  
 21 would you have been consulted?  
 22 A. It could be if they felt that  
 23 somebody wasn't ready at this moment for that  
 24 particular job or if somebody didn't have the  
 25 skills for the job.

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1 S. Donoghue  
 2 Q. Do you recall ever being  
 3 consulted by a manager or supervisor regarding  
 4 the potential promotion of Edmund Bryan for  
 5 another job title?  
 6 A. Yes, I do.  
 7 Q. What circumstances, when did that  
 8 occur?  
 9 A. Again, I can't tell you  
 10 specifically when, but I do remember being  
 11 consulted about it.  
 12 Q. Well, do you recall any details  
 13 about that particular occasion?  
 14 A. Yes, I do.  
 15 Q. Please.  
 16 A. I believe Edmund was looking to  
 17 move into an equipment specialist-type job in  
 18 the department and the discussion was Edmund  
 19 has had a history of communication issues and  
 20 one of the essential aspects of the equipment  
 21 specialist position is that you have very good  
 22 interpersonal skills. It is a training  
 23 component. You are not only training people  
 24 on your staff, but you are also interacting  
 25 with other departments such as the whole

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1 S. Donoghue  
 2 perioperative department. So it does require  
 3 strong personal skills, communication skills.  
 4 Q. And who initiated this discussion  
 5 with you?  
 6 A. John Meggs.  
 7 Q. What did you have to say with  
 8 regards to this discussion?  
 9 A. I remember telling John that if  
 10 Edmund were to apply, that he should be  
 11 interviewed for the position.  
 12 Q. Any other input on your behalf in  
 13 regard to that process?  
 14 A. And to inform Edmund why he may  
 15 not be considered and for him to consider  
 16 developing his communication skills so that if  
 17 something should come up in the future, he  
 18 could be seriously considered for the  
 19 possibility of moving into that position.  
 20 Q. So as far as your communication  
 21 with Mr. Meggs, is it fair to say that when he  
 22 contacted you, he raised a concern regarding  
 23 Edmund Bryan's communication skills to you?  
 24 A. I was aware of Edmund's  
 25 communication skills before that conversation.

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1 S. Donoghue  
 2 Q. How did you become aware of this  
 3 communication skills before?  
 4 A. I believe John Meggs had spoken  
 5 to me about addressing -- how to address  
 6 Edmund's deficits in that area with him.  
 7 Q. Do you recall when this  
 8 conversation took place?  
 9 A. I couldn't tell you specifically,  
 10 no.  
 11 Q. Any notes related to that  
 12 particular conversation?  
 13 A. If I did, they would have been  
 14 submitted. I'm not sure about that.  
 15 Q. Do you recall generally, that  
 16 earlier conversation about, to use your  
 17 language, Edmund's deficits in communication,  
 18 what Mr. Meggs said to you in that  
 19 conversation?  
 20 A. Edmund really chose not to  
 21 interact with the rest of the staff. He  
 22 remained apart. He didn't demonstrate good  
 23 communication skills. So based on that, on  
 24 the observation of that, he would not -- he  
 25 could not at that point be considered a

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1 S. Donoghue  
2 candidate.

3 Q. And I know you are talking about  
4 when you were considering him for the  
5 position, the promotion. I am referring to an  
6 earlier conversation that you said you had  
7 when Mr. Meggs approached you about how to  
8 talk to Edmund about his communication skills.

9 A. My understanding is that Edmund  
10 at some times was very defensive when speaking  
11 to him. So it was just a matter of just  
12 coaching Mr. Meggs on how to approach somebody  
13 that might be more defensive, but to still  
14 hopefully allow them to hear what it was you  
15 were trying to counsel them about.

16 Q. And you don't recall around the  
17 time, year, that this conversation took place?

18 A. It was pretty much an ongoing  
19 thing with Edmund over time.

20 (Transcript continues on next  
21 page)  
22  
23  
24  
25

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1 S. Donoghue  
2 MR. SCOTT: Thank you for your  
3 time, Ms. Donoghue, it has been a  
4 pleasure.

5 MS. KALE: I have no questions.

6  
7 (Time noted: 12:40 P.M.)  
8  
9

10 \_\_\_\_\_  
11 Sheila Donoghue

12 Subscribed and sworn to  
13 before me this \_\_\_\_\_ day  
14 of \_\_\_\_\_ 2008.  
15 \_\_\_\_\_  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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1  
2 CERTIFICATE

3 STATE OF NEW YORK )  
4 ) ss.:  
5 COUNTY OF NEW YORK )

6 I, CHARISSE ROMEO, a Shorthand  
7 Reporter and Notary Public within and  
8 for the State of New York, do hereby  
9 certify:

10 That I reported the proceedings in  
11 the within-entitled matter, and that the  
12 within transcript is a true record of  
13 such proceedings.

14 I further certify that I am not  
15 related, by blood or marriage, to any of  
16 the parties in this matter and that I am  
17 in no way interested in the outcome of  
18 this matter.

19 IN WITNESS WHEREOF, I have hereunto  
20 set my hand this \_\_\_\_\_ day of \_\_\_\_\_,  
21 2008.

22 \_\_\_\_\_  
23 CHARISSE ROMEO  
24  
25

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4 WITNESS ----- PAGE  
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8 EXHIBITS

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10 FOR IDENTIFICATION PAGE

- 11 A Document entitled "Investigation  
12 Summary, Investigation Completed  
13 3/14/07" bearing production Nos.  
14 MSKCC 00105 through MSKCC 00107 59  
15 B One-page corrective action memo  
16 from John Meggs to Rupert Gillette  
17 dated August 3, 2006 64  
18 C Two-page memo from John Meggs to  
19 Rupert Gillette dated September 20,  
20 2005, second page bearing production  
21 No. MSKCC 0010 69  
22  
23  
24  
25